

**Before the
Federal Communications Commission
Washington, D.C. 20554**

	)	CSR 8421-E
	)	CSR 8422-E
	)	CSR 8423-E
	)	CSR 8424-E
	)	CSR 8425-E
In the Matter of	)	CSR 8426-E
	)	CSR 8427-E
Bresnan Communications, LLC	)	CSR 8428-E
	)	CSR 8429-E
Petition for Determination of Effective	)	CSR 8430-E
Competition in Communities in Utah and	)	CSR 8431-E
Wyoming	)	CSR 8432-E
	)	CSR 8433-E
	)	CSR 8434-E
	)	CSR 8435-E
	)	CSR 8436-E
	)	CSR 8437-E

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2011

Released: April 22, 2011

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Bresnan Communications, LLC (“Bresnan”), has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Bresnan is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Bresnan alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”).³ The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ Bresnan states that its rates are not regulated in any of the Communities and that it is seeking formal exemption from the beginning of regulation under current conditions. Petition at 3 n.5.

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

within the relevant franchise area.⁶ For the reasons set forth below, we grant the petition based on our finding that Bresnan is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁷ This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁸ It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Bresnan or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ We further find that Bresnan has provided sufficient evidence of DBS advertising in regional and national media that serve the Communities to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹¹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and DISH.¹³ Also undisputed is Bresnan’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹⁴ Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Bresnan asserts that in some Communities it is the largest MVPD and in others one of the other MVPD providers is the largest and the combined household share of Bresnan and the other MVPDs exceeds 15 percent.¹⁵ The Commission has recognized that in those conditions, whichever MVPD is the

⁶ See 47 C.F.R. §§ 76.906-.907(b).

⁷ 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁸ 47 C.F.R. § 76.905(b)(2)(i).

⁹ See Petition at 4.

¹⁰ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹¹ 47 C.F.R. § 76.905(e)(2).

¹² See 47 C.F.R. § 76.905(g). See also Petition at 7.

¹³ See Petition at Exh. 4.

¹⁴ See Petition at 4.

¹⁵ Petition at 8 & Exh. 1 (Declaration of Paul Jamieson, Managing Counsel, Legislative & Regulatory, Cablevision Systems Corp. (an affiliate of Bresnan), dated Feb. 8, 2011) at ¶ 3.

largest, the remaining competitors have subscribership of over 15 percent.¹⁶ Bresnan sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.¹⁷

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁸ as reflected in Attachment A, we find that Bresnan has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities. Based on the foregoing, we conclude that Bresnan has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Bresnan is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Bresnan Communications, LLC, **IS GRANTED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁶ If Bresnan is the largest MVPD, then MVPDs other than the largest one are the DBS providers, which have a combined share of over 15%. On the other hand, if one of the DBS providers is the largest MVPD, then Bresnan (which alone has over 15%) and the other DBS provider combined have over 15%. See, e.g., *Time Warner Cable Inc.*, 25 FCC Rcd 14422, 14424, ¶ 6 (2010); *Charter Commun.*, 21 FCC Rcd 1208, 1210, ¶ 5 (2006).

¹⁷ Petition at 10 n.33. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁸ Petition at Exh. 5.

¹⁹ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8421-E, 8422-E, 8423-E, 8424-E, 8425-E, 8426-E, 8427-E, 8428-E, 8429-E, 8430-E, 8431-E, 8432-E, 8433-E, 8434-E, 8435-E, 8436-E, 8437-E

COMMUNITIES SERVED BY BRESNAN COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8421-E				
Big Horn County	WY0047	30.71%	1488	457
Greybull	WY0032	20.87%	781	163
CSR 8422-E				
Buffalo	WY0008	26.19%	1718	450
Johnson County	WY0048	84.80%	1138	965
CSR 8423-E				
Cody	WY0006	17.38%	3791	659
Park County	WY0040	65.06%	4276	2782
CSR 8424-E				
East Thermopolis	WY0140	26.00%	150	39
Hot Springs County	WY0148	63.54%	587	373
Thermopolis	WY0003	33.08%	1342	444
CSR 8425-E				
Fremont County	WY0039 WY0078	54.92%	5990	3290
Lander	WY0001	17.14%	2794	479
Riverton	WY0002	18.42%	3816	703
CSR 8426-E				
Washakie County	WY0136	52.19%	1006	525
Worland	WY0004	30.70%	2130	654
CSR 8427-E				
Weston County	WY0152	56.62%	1012	573
Newcastle	WY0045	61.37%	1253	769
CSR 8428-E				
Albany County	WY0156	52.20%	1839	960
CSR 8429-E				
Bar Nunn	WY0131	26.35%	315	83
CSR 8430-E				
Campbell County	WY0046	56.10%	4342	2435
CSR 8431-E				
Laramie County	WY0041	40.38%	8316	3358

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8432-E				
Natrona County	WY0056	40.26%	3929	1582
CSR 8433-E				
Powell	WY0007	16.13%	2083	336
CSR 8434-E				
Rawlins	WY0022	35.63%	3320	1183
CSR 84335-E				
Sheridan County	WY0057	46.26%	3558	1646
CSR 8436-E				
Teton County	WY0050 WY0052	18.14%	4057	736
CSR 8437-E				
Cedar City	UT0039	46.38%	6486	2833
Iron County	UT0258	56.34%	1954	1101

*CPR = Percent of competitive DBS penetration rate.